D.B. CIVIL SPECIAL APPEAL(W)NO.510/2007

Jai Ram

Vs.

State of Rajasthan and Ors.

Date of Order :: 14-11-2007

HON'BLE THE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. B.L. Choudhary, for the appellant.
Mr. L.R. Upadhyaya, Deputy Govt. Advocate.
Mr. M.A. Siddiqui, for the respondents No.2 and 3.

Heard learned counsel for the appellant as well as Shri M.A. Siddiqui appearing for the respondents No. 2 and 3 before the learned Single Judge through vakalatnama. The counsel was not present and peremptory order was passed for non-filing of process fee and notice of respondent No.5 Panchayat Samiti, Taranagar. All other respondents have been served.

Peremptory order was passed in writ petition on 14.3.2001 giving two weeks' time to the counsel for the petitioner to do the needful, failing which the matter shall stand dismissed without reference to this Court. Consequently, for non-compliance of the requisite compliance, writ petition stood dismissed.

The restoration application submitted by the learned counsel for the petitioner too has been dismissed by the learned Single Judge vide order under appeal.

We find from the material on record that the contesting parties of the writ petition were respondents No.2 and 3 (Jai Singh and Meer Singh). The transfer applications separately moved by them in a pending appeal before the Panchayat Samiti, Rajgarh were allowed without notice to the petitioner. Two Panchayat Samities impleaded in the writ petition were not contesting parties but were the appellate authorities and really not even necessary parties. In these circumstances, dismissal of writ through peremptory order was not justified. In these circumstances, we are of the opinion that the restoration application ought to have been allowed rather than dismissing the writ petition without considering the merit.

The Deputy Govt. Advocate present and puts his appearance when call upon to do so. In the aforesaid circumstances, we are inclined to accept the appeal. The appeal is allowed. The judgment under appeal is set-aside. The restoration application No.7/2007 is allowed and S.B. Civil Writ Petition No. 1117/99 is restored to its original

number.

Service on respondent No.5 Panchayat Samiti, Taranagar is dispensed with.

At the request of the learned counsel for the parties, we have also heard the writ petition on merit and find the grievance raised by the petitioner to be justified to the extent that the appeal filed by the two contesting respondents who made separate applications for transfer of that appeal to another panchayat samiti that is to say from Panchayat Samiti, Rajgarh to Panchayat Samti, Taranagar, the learned Collector misapprehending the two applications for transfer as advisory petitions considering the two applications to be case of agreement between the contesting parties and transferred the appeal to Panchayat Samiti, Taranagar without issuing notice to the appellant Jai Ram which in our opinion was not justified.

The writ petition No.1117/99 is allowed. The impugned order Annexure-5 transferring the appeal from Panchayat Samiti, Rajgarh to Panchayat Samiti, Taranagar is quashed.

Since long time has elapsed and constitution of Panchayat Samities, Rajgarh and Taranagar have also changed, the original grievance,

if any, for seeking transfer of proceedings from appellate committee of the Panchayat Samiti, Rajgarh for hearing the case also does not survive so as to warrant transfer of the case from one appellate forum to another.

The appeal is accordingly disposed of. The transfer application is dismissed. The appeal of the appellant shall be decided expeditiously as early as possible, by the Panchayat Samiti, Rajgarh or its appellate committee as the case may be.

The writ petition is accordingly also allowed.

No costs.

[BHANWAROO KHAN],J. [RAJESH BALIA],ACTG.CJ.

RM/